

inquiry. However, as it had been raised, I will state my views on it. Whether or not Kulasekaram J. in *Wong Kim Sang*⁽²⁾ was correct in deciding that Article 78(3) of the 1970 Amendment which, for the purposes of that case, provided that:

"No police officer of the rank of Inspector and above shall be dismissed in rank or reduced in rank without being given a reasonable opportunity of being heard"

had the effect of impliedly repealing Article 135(2) which, for the purposes of the same case, read:

"No member of the police force shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard."

is no longer an issue. The reason is that the Reprint of the Constitution of the Republic of Singapore ("the Reprint") came into force on March 31, 1980 pursuant to Article 93 (now Article 155 of the Reprint) of the Constitution of Singapore as amended by the Constitution (Amendment) Act 1979. Article 135(2) has been omitted in the Reprint. By virtue of Article 155 thereof, the Reprint shall be deemed to be and shall be, without any question whatsoever in all courts of justice and for all purposes whatsoever, the authentic text of the Constitution of the Republic of Singapore in force as from March 31, 1980 until superseded by the next or subsequent authorised reprint (see *Reference by the Registrar of Titles Selangor*⁽⁵⁾ for the interpretation of an analogous provision in a law revision statute).

The other issues raised by the plaintiff can be disposed of shortly. First, the PSC in interdicting the plaintiff from duty acted in accordance with Rule 7 of the 1970 Regulations. Rule 7(i) does not require the PSC to consider the exculpatory statement of the plaintiff before interdicting him. Rule 7(i) has a different function. It empowers the PSC to interdict any officer in the public interest instantly and this must mean without having to hear him. The power of the PSC under Rule 7 is not dependent on or related to their power under Rule 4. Secondly, it is also clear that counsel for the plaintiff had mistakenly thought that the letter of interdiction dated October 22, 1980 from the Ministry of Home Affairs to the plaintiff was a letter given under Rule 4 when in fact it was given under Rule 7 of the 1970 Regulations. There is therefore no substance either in the allegation (which plaintiff's counsel rightly conceded after recognising his mistake) that the PSC had failed to consider the plaintiff's exculpatory state-

ment before deciding to appoint the Committee to hear the plaintiff, or in the submission that the PSC had thereby acted *mala fide* (assuming but without deciding that a mere failure to consider the exculpatory statement was evidence of *mala fides*).

Accordingly, the plaintiff's claim is dismissed with costs.

Order accordingly.

Solicitors: *G. Raman & Partners.*

ANDREW LOH & ANOR. v. MANAGEMENT CORPORATION STRATA TITLE NO. 082

[O.C.J. (Chua J.) September 5, 1986]

[Singapore – Originating Summons No. 439 of 1986]

Strata Title – Maintenance charges against owners – Refusal to pay – Sale of apartment to plaintiffs – Who is liable to pay – Whether plaintiffs "subsidiary proprietors" – Land Titles (Strata) Act, ss. 34(1), (3), (4), (5) & (7) & 35(1).

The plaintiffs, owners of an apartment in the block of apartments at No. 27 Balmoral Park, sought certain orders against the defendants, who were charged with the duty of managing the said block of apartments.

On August 29, 1983, at the Annual General Meeting of the defendants, it was resolved to collect \$3,000.00 from each member for the costs of repairs and repainting the building, and "that the time and amount to be called up from members each time to meet progressive payments will be left to the incoming Council members, who will instruct the Management Agents at their discretion. It was, however, resolved to collect \$1,500.00 from each member in September 1983."

In August 1983 the said apartment was owned by Winifred Chen. The said apartment was later sold to Mr. & Mrs. Ho on January 31, 1984. On February 16, 1984, the defendants wrote to Mr. & Mrs. Ho's solicitors stating that Madam Chen still owed the defendants the sum of \$2,472.00. The solicitors for Mr. & Mrs. Ho replied that they had arranged for Madam Chen's solicitors to retain the sum of \$2,472.00 to meet her outstanding dues to the defendants. However, the defendants were informed that the Mr. & Mrs. Ho were not responsible for the insurance for the year ended December 31, 1984, nor for the repair and repainting of \$1,500.00 and that these were payable by Madam Chen.

The plaintiffs purchased the said apartment from Mr. & Mrs. Ho and became the registered proprietors on June

24, 1985. The defendants issued a Certificate under section 34(4) of the Land Titles (Strata) Act (the Act) intimating that there was due and owing from the vendors the sum of \$1,500.00 for repairs and repainting fund. The plaintiffs' solicitors sent a copy of the defendants' certificate to the vendors' solicitors and asked the vendors to make payment to the defendants. The vendors' solicitors informed the plaintiffs that their clients were not liable for the \$1,500.00 and that the certificate issued under section 34(4) of the Act was incorrect and that the sum was owing from Madam Chen to the defendants.

The defendants' subsequent attempts to recover the \$1,500.00 from either Mr. & Mrs. Ho or Madam Chen were unsuccessful. On March 27, 1986, the defendants lodged a charge pursuant to section 35 of the Act against the apartment. The plaintiffs applied by Originating Summons for an order, *inter alia*, to have the said apartment discharged from the said charge.

Held, dismissing the plaintiffs' application: the plaintiffs were the subsidiary proprietors as defined by section 34(7) and were liable for the sum of \$1,500.00 by reason of section 34(5) and the charge lodged by the defendants was good in law.

ORIGINATING SUMMONS.

Angela Wang Poey Foon for the plaintiffs.

Gan Choon Beng for the defendants.

Cur. Adv. Vult.

Chua J. : By this Originating Summons the plaintiffs, the owners of Apartment #04-29 in the block of apartments known as No. 27 Balmoral Park, Singapore, (the said apartment) seek certain orders against the defendants, who are charged with the duty of managing the said block of apartments.

The facts are these. In August 1983 the said apartment was owned by Madam Winifred Chen. On August 29, 1983, at the Annual General Meeting of the defendants, it was resolved to collect \$3,000.00 from each member for the costs of repairs and repainting the building, and "that the time and amount to be called up from members each time to meet progressive payments will be left to the incoming Council members, who will instruct the Management Agents at their discretion. It was, however, resolved to collect \$1,500.00 from each member in September 1983."

In January 1984, Mr. & Mrs. Ho Kuek Hin agreed to purchase the said apartment from Madam Chen. On January 5, 1984, their solicitors wrote to the defendants inquiring about Madam Chen's indebtedness to them.

A On January 25, 1984, the defendants replied stating that the total amount outstanding against Madam Chen was \$2,472.00 made up as follows:

"Maintenance charges for November 1983 to January 1984
– 3 months @ \$215
per month \$ 645.00

B Repairs of water tank, pro rata
total of \$11750 vide copy of AGM
25/8/82 attached \$ 327.00

Repainting etc – partpayment
(Total liability \$3,000.00 vide
Copy of AGM 29/8/83) \$1,500.00

C \$2,472.00"

The sale to Mr. & Mrs. Ho was completed on January 31, 1984, but the transfer was not registered until August 31, 1984.

D On February, 1984, the defendants wrote to Mr. & Mrs. Ho's solicitors stating that Madam Chen still owed the defendants the sum of \$2,472.00 as detailed in their letter of January 25, 1984, and enclosing a bill No. 20139 addressed to Mr. & Mrs. Ho for \$1,835.90 and requesting payment. The
E \$1,835.90 was made up of the following:

"Feb 84 Maint. Charge \$ 215.00
Insurance for year ended 31.12.84
Pub. Liab. \$500,000 per accident
Fire : \$9 M for the building 120.90

Repainting & repairs (Final
F Payment Expns Approved AGM
29/8/83 1,500.00
\$1,835.90"

Mr. & Mrs. Ho's solicitors replied that they had
G arranged for Madam Chen's solicitors to retain the sum of \$2,472.00 to meet her outstanding dues to the defendants. But with reference to bill No. 20139 the defendants were informed that Mr. & Mrs. Ho were not responsible for the insurance for the year ended December 31, 1984, nor for the
H repairs and repainting of \$1,500.00 and that these were payable by Madam Chen.

By an Option dated February 16, 1985, duly executed by the plaintiffs, the plaintiffs purchased the said apartment from Mr. & Mrs. Ho and became the registered proprietors on June 24, 1985.
I

In the course of investigating the title of the said apartment, the plaintiffs' solicitors in March 1985 inquired from the defendants about the vendors' indebtedness to them. The defendants

issued a Certificate under section 34(4) of the Land Titles (Strata) Act (the Act) intimating that there was due and owing from the vendors the sum of \$1,500.00 for repairs and repainting fund. The plaintiffs' solicitors then sent a copy of the defendants' Certificate to the vendors' solicitors and asked the vendors to make payment to the defendants.

The vendors' solicitors then informed the plaintiffs that their clients were not liable for the \$1,500.00 and that the Certificate issued under section 34(4) of the Act was incorrect and that the sum was owing from Madam Chen to the defendants. In view of the said dispute, the sum of \$1,500.00 was not paid to the defendants on completion of the sale and purchase and was held by the vendors' solicitors pending the outcome of the dispute between the parties.

On March 5, 1985, the defendants wrote to Mr. & Mrs. Ho's solicitors requesting payment of the \$1,500.00 contending that they were liable to pay as successors in title to the property under section 34(5) of the Act. Mr. & Mrs. Ho denied that they were liable and said that the sum was payable by Madam Chen since the repairs and repainting costs were resolved by the defendants to be payable whilst she was the registered proprietor.

The defendants thereafter tried to recover the \$1,500.00 from Madam Chen but without success.

On March 27, 1986, on the application of the defendants, a Charge pursuant to section 35 of the Act in favour of the defendants against the said apartment was registered in the Registry of Titles (Charge No. 1/32449D). In the Statutory Declaration filed on behalf of the defendants in support of their application it was stated that the registered subsidiary proprietor had not paid the following :

"One time levy for repairs and repainting	 \$1,500.00
Insurance from 24/6/1985 to 31/12/1985	 56.00
10% interest on late payment	 262.50
	<u>\$1,818.50"</u>

The plaintiffs now pray for —

- (1) an order that the defendants execute an Instrument of Discharge of Charge No. 1/32449D; alternatively an order that the said apartment be discharged from the said charge;

- A (2) an order that the said apartment be freed from the said Charge;
- (3) an order directing the Registrar of Titles to cancel the said Charge from the Register kept by the Registrar;
- B (4) an order declaring that the plaintiffs are not liable to pay the defendants the \$1,500.00 and interest thereon or any part thereof;
- (5) an order restraining the defendants from lodging another Charge against the said apartment for the alleged non-payment of the \$1,500.00 and interest.
- C

The main question for consideration is, who is liable for the sum of \$1,500.00 which is the balance of the amount resolved to be paid by the Resolution of the AGM on August 29, 1983. The AGM resolved to collect \$3,000.00 for repairs and repainting of which \$1,500.00 was to be collected in September 1983. The balance was to be collected at a later date to be decided by the Council.

- Section 34(1) of the Act provides that the Management Corporation (MC) shall establish a fund for administrative expenses called "the management fund" sufficient in the opinion of the MC for the purposes of controlling, managing and administering the common property, paying rents, rates and premiums of insurance and discharging any other obligations of the MC.
- E

For the purpose of establishing and maintaining the management fund the MC may (under section 34(3)) at a general meeting —

- "(a) determine from time to time the amounts to be raised for the purposes mentioned in subsection (1) of this section;
- G (b) raise the amounts so determined by levying contributions on the subsidiary proprietors in proportion to the share units of their respective lots; and
- (c) determine the amount of interest payable by a subsidiary proprietor in respect of late contributions which shall not exceed the rate of ten per cent per annum."
- H

It is clear, therefore, that the defendants could by this Resolution of August 29, 1983, resolve to collect \$3,000.00 from each of the subsidiary proprietors for the repairs and painting of the building. The subsidiary proprietor of the said apartment at the date of the Resolution was Madam Chen.

It is argued on behalf of the plaintiffs that when the first \$1,500.00 was payable in September

1983, Madam Chen was the registered owner of the said apartment. Even when the second \$1,500.00 was payable on January 31, 1984, (bill No. 20139) Madam Chen was still the registered owner as Mr. & Mrs. Ho did not register the transfer to themselves until August 31, 1984. It is submitted that under section 34 the second sum of \$1,500.00 is payable by Madam Chen.

It is further argued by counsel for the plaintiffs that the letter of the defendants dated January 25, 1985, is a Certificate issued by the defendants under section 34(4). That Certificate certified that the total amount outstanding against Madam Chen was \$2,472 and according to section 34(4) the Certificate shall be conclusive evidence of the matters certified therein as against the defendants and in favour of Mr. & Mrs. Ho who had relied in good faith on it.

It is submitted that the Certificate of January 25, 1985, is conclusive as against the defendants and they are not entitled now to say that the additional \$1,500.00 is payable by Mr. & Mrs. Ho. It is argued that the defendants well know that Madam Chen is really the person liable for the second sum of \$1,500.00. The defendants could not recover it from Madam Chen and that is why they have tried to recover it from Mr. & Mrs. Ho and sought to pressurise the plaintiffs by lodging the charge against the property.

It is also submitted that the defendants are not entitled to lodge the charge under section 35 as the two conditions precedent in section 35(1)(a) and (b) are not applicable in this case as no contribution was ever levied on the plaintiffs or Mr. & Mrs. Ho for that matter.

The Certificate of January 25, 1984, is a correct certificate at the date it was issued. The sum then due from Madam Chen was \$2,472.00 including the first payment of \$1,500.00 due in September which was described as part payment. The second payment of \$1,500.00 was not then due but it was made clear in the Certificate that the total liability for repairs *etc* was \$3,000.00 and copy of the Minutes of the AGM of August 29, 1983, was attached. Mr. & Mrs. Ho were aware that the first payment of \$1,500.00 was due and payable and that a further \$1,500.00 was due and payable when the Council decided to collect the sum. Notice of the total liability of \$3,000.00 was duly given and the Hos chose to ignore it.

Section 34(5) provides :

A "Any contribution levied under subsection (3) of this section in respect of a lot is due and payable on the passing of a resolution to that effect by the management corporation, and in accordance with the terms of that resolution, and may be recovered as a civil debt from a subsidiary proprietor of, or his successor in title to, the lot."

B Section 34(7) provides :

"For the purposes of subsections (5) and (6) of this section, "subsidiary proprietor" includes the person for the time being receiving the rent of the lot, whether as agent or trustee or as receiver, and who would receive the same if the lot were let to a tenant."

C The sale to Mr. & Mrs. Ho was completed on January 31, 1984, and although the transfer was not registered until August 31, 1984, they were the subsidiary proprietors within the meaning of section 34(7) and were liable to pay the \$1,500.00 due on January 31, 1984.

E Under section 35(1) any contribution levied under section 34(3), which remains unpaid on the expiry of fourteen days after the MC has sent a written demand for the contribution, that contribution including any interest due thereon shall constitute a charge on the lot in favour of the MC upon lodgment of an instrument of charge by the MC with and the registration thereof by the Registrar of Titles. This the defendants did.

F Section 35(1) must be read with section 34(3), 34(5) and 34(7). The plaintiffs are subsidiary proprietors as defined by section 34(7) and are liable for that sum of \$1500.00 by reason of section 34(5) and the charge lodged by the defendants is good in law.

G The plaintiffs' Originating Summons is dismissed with costs.

Claim dismissed.

H Solicitors : Shook Lin & Bok; Chu Chun Gan & Ooi.

I